

DEED OF CONSERVATION EASEMENT

This Conservation Easement is granted on this \_\_\_\_ day of \_\_\_\_\_ 201\_\_, by \_\_\_\_\_, ("Grantor"), residing at \_\_\_\_\_, to The Watershed Agricultural Council of the New York City Watersheds, Inc. ("Grantee"), a not-for-profit corporation organized under the New York State Not-For-Profit Law, having its principal office at 33195 State Highway 10, Walton, New York 13856.

Whereas:

- A. The Grantor is the sole Owner in fee simple of the subject property described in Exhibit A annexed hereto and incorporated herein by this reference and depicted on a certain map entitled "The Watershed Agricultural Council of the New York City Watersheds, Inc., Conservation Easement Survey" ("Survey"), in the matter of acquiring easements on Lands of \_\_\_\_\_, dated \_\_\_\_\_ and last revised \_\_\_\_\_ (the "Easement Property"), which maps are to be filed concurrently with this Deed of Conservation Easement;
- B. The Easement Property is primarily forest land with other mixed-use land cover that may include open fields and fields in various stages of woodland succession and contains hydrologically-active areas and other special natural features that are important to the protection of the quality of the New York City ("City") water supply;
- C. The New York State Environmental Conservation Law ("NYSECL"), Article 49, Title 3, authorizes conservation easements that are intended to "implement the state policy of conserving, preserving and protecting environmental assets and natural and manmade resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands";
- D. The Certificate of Incorporation and By-Laws of The Watershed Agricultural Council of the New York City Watersheds, Inc. ("WAC"), as amended, include among their objectives and guiding principles the protection of the City's water supply, the maintenance of the economic viability of agricultural and forest enterprises, and the acquisition of conservation easements to protect sensitive lands;

- E. The 1997 New York City Watershed Memorandum of Agreement and the Water Supply Permit issued to the City by the New York State Department of Environmental Conservation on December 24, 2010, provide the framework for programs funded by New York City pursuant to which WAC may acquire conservation easements at fair market value from willing sellers; and
- F. The Grantee is a "qualified conservation organization," as defined by the Internal Revenue Code, and a "not-for-profit conservation organization," as defined by New York State Environmental Conservation Law, and accepts the responsibility of stewarding and enforcing the terms of this Conservation Easement and upholding its Conservation Purposes, as defined herein.

Now, therefore, for the reasons given above, and in consideration of \_\_\_\_\_ Dollars (\$##) paid, the receipt and sufficiency of which is hereby acknowledged, the Grantor voluntarily grants and conveys to the Grantee, and the Grantee voluntarily accepts, a conservation easement as defined by Article 49, Title 3, of the NYSECL consisting of the terms, covenants, rights, restrictions and obligations described herein ("Conservation Easement").

1. CONSERVATION PURPOSES.

This Conservation Easement is intended to protect the water quality of the New York City water supply watershed by restricting, prohibiting and/or limiting activities on the Easement Property that have the potential to degrade water quality, and to allow forestry activities to be conducted on the Easement Property ("Conservation Purposes"). In furtherance of this objective, this Conservation Easement generally seeks, among other things, to:

- A. ensure that the forested areas of the Easement Property remain undeveloped, unfragmented and forested;
- B. ensure that forest management activities are conducted in a manner that is protective of water quality;
- C. conserve natural resources such as water, soil, and vegetation on the Easement Property that have a direct impact on water quality;
- D. limit the manner, location and extent of soil disturbance on the Easement Property so as to prevent or limit erosion;
- E. limit the form, location, and density of development on the Easement Property; and
- F. facilitate stewardship of the Easement Property.

## 2. DEFINITIONS.

The following terms shall have the stated meanings when used in this Conservation Easement:

- A. **Acceptable Development Area (ADA)** – One of three Designated Use Areas, hereinafter defined, the boundaries of which are identified on the Survey, within which certain activities are either allowed, restricted or prohibited under this Conservation Easement.
- B. **Agricultural Activities** – Tilling, haying, brush-hogging, plowing, harrowing, the application of manure or pesticides, the confinement and pasturing of livestock, Christmas tree production, the production of orchards and/or the cultivation of crops.
- C. **Baseline Documentation** – The set of documents that consists of photographs, maps, surveys and supporting text that the Grantor and Grantee mutually agree describes the general condition of the Easement Property, documents the location of buildings, improvements, and driveways on the Easement Property, and defines the boundaries of the Designated Use Areas (hereinafter defined) of the Easement Property as of the date of this Conservation Easement.
- D. **Best Management Practices (BMPs)** – Land use methods, measures, improvements or actions considered to be the most practical and effective in preventing or reducing the contamination or degradation of the water supply.
- E. **Bluestone Extraction** – The mining of bluestone from an exposed area of bedrock.
- F. **Bluestone Extraction Plan** – A plan that provides for the identification and application of resource-specific, managerial and/or structural BMPs designed to mitigate potential adverse impacts of Bluestone Extraction to water quality.
- G. **Commercial Forestry** – The felling of trees equal in volume to more than 5,000 board feet of timber or 15 standard cords on the Easement Property during one calendar year.
- H. **Designated Use Areas** – The three areas of the Easement Property, consisting of the Acceptable Development Area, Multiple Use Area and Forest Area, the boundaries of which are defined on the Survey, within which certain activities are either allowed, restricted or prohibited under this Conservation Easement.

- I. **Forest Activities** – The production of timber and other forest products including firewood (in amounts less than that which constitutes Commercial Forestry), maple syrup, ginseng, and mushrooms.
- J. **Forest Area (FA)** – One of three Designated Use Areas, the boundaries of which are identified on the Survey, within which certain activities are either allowed, restricted or prohibited under this Conservation Easement.
- K. **Forest Harvest Plan** – A written plan prepared in accordance with Grantee’s standards that provides a statement of goals and objectives for a specific commercial timber harvest, including the identification and proposed application of water-quality BMPs and describes the size and timing of a harvest and the BMPs to be implemented to mitigate potential adverse environmental impacts.
- L. **Historical Debris Pile** – An accumulation of discarded materials, such as plastic, metal, bottles, cans, vehicles or parts thereof, construction or demolition material, and/or household appliances, that existed on the Easement Property prior to the date of this Conservation Easement.
- M. **Impervious Surface** – Surface area that is either impervious to water or which substantially prevents the infiltration of water into the soil at that location. Impervious Surfaces include, but are not limited to: pavement, concrete, asphalt, rooftops, and other hard surfacing materials, and do not include soil, crushed stone, or gravel surfaces.
- N. **Multiple Use Area (MUA)** – One of three Designated Use Areas, the boundaries of which are identified on the Survey within which certain activities are either allowed, restricted or prohibited under this Conservation Easement.
- O. **New York City Watershed** – The land area contributing surface water to the New York City water supply.
- P. **Pollutant** – Unpermitted dredged spoil, solid waste, incinerator residue, sewage, effluent, garbage, sewage sludge, munitions, chemical waste, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, and industrial and municipal waste discharged into water.

- Q. **Sediment** – Organic or mineral solids or colloids that are or have been transported by the process of hydrologic, hydraulic, or atmospheric transport, including but not limited to erosion.
  
- R. **Sewage Treatment System** – Any improvement that is used for the collection and/or treatment and/or disposal of sewage, whether or not such use is routine.
  
- S. **Subdivision** – The division of the Easement Property into tax parcels that differ from those of which the Easement Property is comprised as of the date of this Conservation Easement or any alteration or change of any lot line or boundary of any such tax parcel.
  
- T. **Trail** – A linear, cleared, non-impervious path less than 8 feet in width.
  
- U. **Utility(ies)** – Pipes, cables, transformers, poles and other structures that provide electricity, heat, and/or communication services, municipal or community water, and/or municipal or community sewer services on, over, or under the Easement Property.
  
- V. **Waste** – All forms of waste, including trash, refuse, debris, septic effluent, sewage, sewage sludge or liquid, garbage, discarded chemicals, radioactive materials, and hazardous or toxic substances as defined by Federal, State or Local law.
  
- W. **Watercourse** – A visible path through which surface water travels on a regular basis, including an intermittent stream, pond or lake, seep, and spring, which may or may not be identified as a Watercourse in the Baseline Documentation. A drainage ditch, swale or surface feature that contains water only during and immediately after a rainstorm or snow melt is not a Watercourse.
  
- X. **Watercourse and Wetland Work** – Any activity conducted within a Watercourse or Wetland that may create a surface or subsurface disturbance, including but not limited to: cutting or removal of trees and other vegetation, pond construction and maintenance, stream bank and stream bed disturbance or stabilization, and bridge or culvert placement and removal. Maintenance of existing fords, crossings, bridges and culverts, repair and maintenance of existing springs and spring boxes shown on the Baseline Documentation are not considered Watercourse or Wetland Work.
  
- Y. **Wetland** – Any area that is inundated or saturated by surface or ground water at a frequency and

duration sufficient to support, and that under normal conditions does support, vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes and bogs which may or may not be identified as a Wetland in the Baseline Documentation.

### 3. DESIGNATED USE AREAS.

The Easement Property is divided into three distinct Designated Use Areas referred to as the Acceptable Development Area (ADA), the Multiple Use Area (MUA) and the Forest Area (FA), the locations of which are defined and depicted in the Survey. Within each of these Designated Use Areas, certain activities, described in detail herein, are either allowed without prior notice to or approval of Grantee, allowed only with prior written notice to Grantee, allowed only with prior notice to and written approval of Grantee, or prohibited hereunder.

ADA: The ADA is the Designated Use Area within which any activity is allowed subject only to the restrictions set forth in Section 4. It is the only Designated Use Area within which a residential structure and/or Sewage Treatment System is allowed.

FA: Forest Activities, Commercial Forestry, and other activities that are conducted in conformance with the restrictions set forth in Section 4 below are allowed within the FA.

MUA: The MUA is the area in which activities, including but not limited to those allowed in the FA, are allowed unless they are specifically prohibited by this Conservation Easement, provided such activities are conducted in conformance with the restrictions set forth in Section 4 below.

### 4. RESTRICTIONS ON USE OF THE EASEMENT PROPERTY.

#### A. Subdivision and/or Conveyance of Parcels:

1. Subdivision of the Easement Property is prohibited.
2. The conveyance, transfer or grant of less than the total acreage comprising the Easement Property is prohibited.
3. Boundary line adjustments that reduce the number of tax parcels but do not alter the common boundary lines with tax parcels that are not covered by this Conservation Easement are allowed with prior written notice to the Grantee.
4. Any act not specifically allowed above or elsewhere in this Conservation Easement, that changes the size or configuration of the Easement Property is prohibited.

**B. Agricultural Activities.**

1. Agricultural Activities are allowed in the ADA without prior notice to or approval of Grantee.
2. Agricultural Activities are prohibited within the FA except for wildlife feed-plots consistent with Section 4(K).
3. Agricultural Activities are allowed in the MUA subject to the following conditions:
  - a. Agricultural Activities shall not occur on more than 20 acres of the MUA during the course of one calendar year, except as otherwise provided in Section 4(B)3(f);
  - b. tilled or cultivated soil shall be revegetated as soon as practicable and shall not be exposed during winter months;
  - c. Grantor shall erect and maintain adequate fences so as to exclude livestock from Watercourses and Wetlands;
  - d. Grantor shall prevent the discharge of Waste or contaminated runoff from livestock into any Watercourse or Wetland;
  - e. Agricultural Activities that disturb soil within 25 feet of a Watercourse or Wetland are allowed only with prior notice to and written approval of Grantee; and
  - f. brush hogging and haying may occur on more than 20 acres but is prohibited within 25 feet of a Watercourse or Wetland. Notwithstanding the aforesaid, brush hogging within 25 feet of a Watercourse or Wetland for the sole purpose of removing an invasive species is allowed with prior notice and written approval of the Grantee.

**C. Forest Activities**

Forest Activities are allowed anywhere on the Easement Property.

**D. Tree Cutting and Commercial Forestry**

1. Trees may be cut within the ADA for any reason and in any amount without prior notice to or approval of Grantee.
2. Trees may be cut in the FA and MUA for emergency purposes or to control insects, disease or invasive species, to enhance wildlife habitat, prevent personal injury and property damage, and for domestic uses including firewood, and for construction of trails and allowed improvements on the Easement Property, without prior notice to or approval of Grantee provided such cutting does not exceed the threshold for Commercial Forestry as set forth herein.
3. Commercial Forestry is:
  - a. allowed within the ADA without a Forest Harvest Plan and without prior notice to and approval of Grantee; and

- b. allowed within the FA and the MUA provided it is conducted in accordance with a Forest Harvest Plan prepared at Grantor's expense and approved by Grantee in writing; or, in the event Grantee has no program in place to approve such Plan(s) in a manner that is consistent with the NYSDEC "Forest Management Stewardship Plan" or any successor standards and in accordance with the technical standards set forth in the NYSDEC "Best Management Practices for Water Quality" field guide or any successor standard.
4. In the event the Easement Property is enrolled in New York State's Real Property 480 and/or 480(a) Forestry Tax Program ("Forest Tax Program"), a program administered by the State of New York for forest management, on the date of this Conservation Easement, the Grantor shall not be prohibited by this Conservation Easement from full compliance with the requirements of such program.
5. Grantor may enroll in the Forest Tax Program or any other forestry-incentive program after the date of this Conservation Easement with prior notice to and written approval of Grantee in which case Grantor shall not be prohibited by the Conservation Easement from full compliance with the requirements thereof.

**E. Construction and maintenance of Utilities, Trails, roads and/or landings.**

1. The construction of Utilities, roads and/or landings is:
  - a. allowed anywhere on the Easement Property subject to the limitations on Impervious Surfaces set forth at section 4(G) of this Conservation Easement;
  - b. allowed in the ADA without prior notice to and approval of Grantee;
  - c. allowed in the FA and MUA only with prior notice to and written approval of the Grantee; and
  - d. allowed in the FA in accordance with a Forest Harvest Plan that has been approved by Grantee prior to the commencement of such construction.
2. The maintenance and repair of Utilities, roads and/or landings that are identified on the Baseline Documentation or are constructed after the date of this Conservation Easement in accordance with Section 4(E)1 above is allowed anywhere on the Easement Property subject to sections 4(G), 4(I), 4(J) and 4(K) of this Conservation Easement.
3. The construction or maintenance of Trails is allowed anywhere on the Easement Property subject to the thresholds and requirements of Sections 4(D), 4(J), and 4(K) of this Conservation Easement.
4. Communication towers or devices, wind turbines, satellite or television antennae, solar panels



or such similar equipment and roads thereto may be erected anywhere on the Easement Property subject to applicable governmental approval and the prior notice and written approval of Grantee, provided such improvement(s) is situated more than 100 feet from any Watercourse or Wetland. The construction, maintenance and/or repair of said equipment anywhere on the Easement Property is subject to the restrictions of Section 4 of this Conservation Easement.

**F. Sewage Treatment Systems, wells and springs.**

1. Sewage Treatment Systems and wells are:
  - a. allowed in the ADA without prior notice to or approval of Grantee, provided such sewage treatment system only serves structures in the ADA; and
  - b. prohibited in the MUA and the FA.
2. Reconfiguration of ADA to accommodate construction of a Sewage Treatment System:
  - a. if a Sewage Treatment System cannot be sited in the ADA due to inadequate soil conditions, the ADA can be reconfigured on the Easement Property, with prior notice to and written approval of Grantee, consistent with Section 19 of this Conservation Easement, provided the ADA as reconfigured is no larger than the original ADA; and
  - b. all costs associated with the reconfiguration of the ADA, including but not limited to the costs of Grantee staff time, surveying, legal fees, obtaining regulatory approvals and recording of deeds shall be borne solely by Grantor.
3. Springs and spring boxes – springs and spring boxes, and pipes used to transport water therefrom are:
  - a. allowed in the ADA without prior notice to or approval of Grantee, provided such spring or spring box only serves structures in the ADA;
  - b. allowed in the MUA or FA only with prior notice to and approval of Grantee; and
  - c. allowed anywhere on the Easement Property without prior notice to and approval of Grantee, provided they existed as of the date of recording of this Conservation Easement and are identified in the Baseline Documentation or were approved by Grantee pursuant to this paragraph.

**G. Impervious Surfaces**

This Conservation Easement limits the number of square feet of Impervious Surface that are allowed on the Easement Property and restricts the location thereof. These limitations, set forth below, are cumulative and include the total of: (a) the number of square feet of Impervious

Surface that existed on the Easement Property as of the date of this Conservation Easement and (b) the number of square feet of Impervious Surfaces constructed since the date of this Conservation Easement.

1. Within the ADA: a total of 43,560 square feet (one acre) of Impervious Surface is allowed without prior notice to or approval of Grantee.
2. Within the MUA and FA: a cumulative total of 5,000 square feet of Impervious Surface is allowed within the MUA and FA combined, subject to the following conditions:
  - a. any Impervious Surface constructed after the date of this Conservation Easement must be located beyond 100 feet of a Watercourse or Wetland; and
  - b. a cumulative total of 1,000 square feet of Impervious Surface is permitted with prior notice to Grantee. The construction of Impervious Surfaces which when combined with existing Impervious Surfaces totals more than 1,000 square feet is allowed only with prior notice to and written approval of the Grantee.
3. Grantor may maintain, repair, or replace within the same footprint Impervious Surfaces identified in the Baseline Documentation or approved pursuant to this Section 4(G).

#### H. Storage of Waste

1. The dumping, storage, application, land filling, or accumulation of Waste anywhere in, under, or on the Easement Property is prohibited, except as provided for below and in Section 4(F).
2. The routine containerized storage of household trash and Waste generated on the Easement Property for eventual transport off site for proper disposal in the ADA is allowed without prior notice to and approval of Grantee.
3. The storage of Waste generated by Agricultural Activities or Forest Activities conducted on the Easement Property in the ADA is allowed without prior notice to and approval of Grantee.
4. Portable toilets in the ADA are allowed without prior notice to and approval of Grantee.
5. Historical Debris Piles that are identified on the Baseline Documentation are allowed on the Easement Property provided they do not contain hazardous or toxic substances as defined by Federal, State or Local law. Historical Debris Piles shall not be enlarged or relocated on the Easement Property, but can be reduced and/or removed from the Easement Property.
6. Historical Debris Piles that are not identified on the Baseline Documentation are allowed only with prior notice and approval of Grantee.

#### I. Granting of Utility and Access Easements

The granting of any type of Utility easement or access easement on, over, under, or through the

Easement Property is prohibited except that it is:

1. allowed in the ADA without prior notice to or approval of Grantee;
2. allowed in the FA or MUA only with prior notice to and written approval of Grantee. The construction of any access road in association with such approved Utility or access easement shall be in accordance with Section 4(E) and all other applicable provisions of this Conservation Easement.

**J. Watercourse and Wetland Work**

The performance of Watercourse and Wetland Work on the Easement Property is prohibited except that it is:

1. allowed in the ADA without prior notice to or written approval of Grantee;
2. allowed in the FA or MUA only with prior notice to and written approval of Grantee except for the felling of trees under the threshold for Commercial Forestry, which is allowed without prior notice to and approval of Grantee; and
3. allowed in cases of imminent harm to life, property or safety with written notice to Grantee.

**K. Surface Disturbances.**

The exposure or disturbance of soil on the Easement Property is prohibited except that it is:

1. allowed in the ADA without prior notice to or approval of Grantee;
2. allowed anywhere on the Easement Property: (a) to facilitate emergency work necessary to remedy dangerous conditions created beyond the control of the Grantor, to restore damaged transportation routes, and/or to protect health, safety, or property from imminent danger with written notice to Grantee; and (b) to conduct Forest Activities consistent with Section 4D;
3. allowed within the MUA without prior notice to or approval of Grantee, except:
  - a. within 100 feet of a Watercourse or Wetland unless pursuant to a Grantee-approved plan or in connection with Agricultural Activities consistent with Section 4B; and
  - b. on more than 5,000 square feet at any one time unless pursuant to a Grantee-approved plan or in connection with Agricultural Activities consistent with Section 4B;
4. allowed within the FA without prior notice to or approval of Grantee, except:
  - a. within 100 feet of a Watercourse or Wetland unless pursuant to a Forest Harvest Plan or another Grantee-approved plan; and
  - b. on more than 5,000 square feet at any one time unless pursuant to a Grantee-approved plan.

**L. Mining.**

Except as may be reasonably necessary to carry out the uses permitted on the Property under the terms of this Easement, the exploration for, or development and extraction of, soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance by any surface mining method or any other method is prohibited with the exception of bluestone extraction undertaken with written approval of Grantee<sup>1</sup>. Prior to commencing any commercial bluestone mining, Grantor, at its sole cost, shall submit a Bluestone Extraction Plan following the guidelines described in the City's *"Guidelines for Bluestone Mining on Watershed Agricultural Council Conservation Easements"* or such successor standard approved by Grantee. Prior to commencing any commercial bluestone mining, such plan shall be reviewed and approved by Grantee. The total surface area disturbed for Bluestone Extraction on the Easement Property at any one time shall not exceed 20,000 square feet. Once remediation has been completed and approved by Grantee, the remediated area shall no longer count toward the 20,000 square feet limitation.

2. Soil, sand, gravel and rock for use on the Easement Property may be removed from the MUA with prior notice to and written approval of Grantee.
3. Compulsory integration pursuant to New York State law shall not be considered mining under this Conservation Easement and nothing herein shall prevent Grantor from receiving royalties therefrom.

**5. Activities that Cause Pollutants to enter Watercourses or Wetlands**

Notwithstanding anything to the contrary contained in this Conservation Easement, any activity conducted outside the ADA that is not consistent with a Grantee-approved Forest Harvest Plan or other Grantee-approved plan that causes a material amount of Sediment or other Pollutant to enter a Watercourse or Wetland anywhere, whether on or off the Easement Property, is prohibited by this Conservation Easement.

**6. Approvals.**

Prior to commencing any activity, including Commercial Forestry, for which Grantor is required under this Conservation Easement to obtain Grantee's written approval, Grantor shall request such approval in writing and shall provide Grantee with such information and plans as Grantee has determined are needed to evaluate such request. Grantor's request shall be deemed approved if no written response is provided by Grantee within 45 days of Grantee's receipt of the request for approval. Written response from the Grantee may include, but is not limited to, a requirement that Grantor submits to Grantee additional information to evaluate the request. Grantee's approval shall be conditioned so that

the approval is consistent with the Conservation Purposes of this Conservation Easement and will not substantially diminish or impair the forestry or the water quality values of the Property. Grantee may approve the request, approve the request subject to specific conditions, or deny the request. All approvals shall be subject to the condition that Grantor conduct the requested activity in a manner consistent with the Conservation Purposes of this Conservation Easement. In the event there is an existing violation of this Conservation Easement at the time a request for Grantee approval has been submitted, Grantee may either:

- i. Delay review until the violation is cured;
- ii. Approve the request conditioned upon curing of the violation; or
- iii. Deny the request, and advise Grantor that such request may be resubmitted after the violation is cured.

**7. RIGHTS RETAINED BY GRANTOR.**

Grantor retains the right to perform any activity not specifically prohibited or restricted by this Conservation Easement provided such activity is consistent with the Conservation Purposes of this Conservation Easement. These rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Easement Property and the right to sell or otherwise convey ownership of the Easement Property in its entirety.

**8. DEVELOPMENT RIGHTS.**

The parties to this Conservation Easement agree that all development rights not specifically reserved are hereby extinguished and, notwithstanding any municipal law, rule or regulation to the contrary, may not be transferred to any person or entity, attached to any other parcel of real property, or used to calculate permissible density or lot yield for any other land not restricted by this Conservation Easement or otherwise.

**9. Indemnification.**

Grantor shall release, indemnify and hold harmless Grantee and any of its agents, assigns, employees or independent contractors from and against any claims, suits, causes of action, penalties, losses, costs, expenses, judgments or liabilities including, but not limited to, attorney's fees and disbursements, suffered or incurred by Grantee in connection with:

- A. Any injury to persons or damage to the Easement Property arising from any activity on or use of

the Easement Property, except injury to persons or damage to the Easement Property proximately caused by the negligence or willful acts or omissions of Grantee, its agents, assigns, employees or independent contractors.

- B. Any actions or claims of any nature by third parties arising out of the granting of this Conservation Easement;
- C. Any breach of the terms and conditions contained herein by Grantor and any exercise by Grantee, New York City, or the New York State Attorney General, of any right or remedy of enforcement of the terms of this Conservation Easement.

**10. REAL PROPERTY TAXES, CHARGES, LEVIES AND ASSESSMENTS.**

- A. Apportionment – Grantee shall cause property taxes, charges, levies or assessments payable with respect to the Easement Property to be apportioned to the respective interests of Grantor and Grantee pursuant to Title 4-A of Article 5 of the Real Property Tax Law, *“Assessment and Taxation of Watershed Conservation Easements and Watershed Agricultural Easements Acquired by or on Behalf of the City of New York for Watershed Protection Purposes”*, or successor statute, as may be required by law or inter-municipal agreement.
- B. Failure to Pay – If Grantor or Grantee fails to pay when due its apportioned property tax, charge, levy, assessment, or other governmental or municipal charge that may become a lien on the Easement Property if unpaid, the other party may make such payment (but shall have no obligation to do so) on behalf of the defaulting party in accordance with any bill or statement issued by an assessing entity without inquiry into the accuracy thereof. The party making such payment shall be entitled to reimbursement from the defaulting party of the amount of any such payment together with interest at an annual rate equal to two percentage points over the published prime rate of interest (as such rate appears from time to time in the *Wall Street Journal* or, if the *Wall Street Journal* is no longer published or no longer lists its prime rate, in such other publication as shall be selected by Grantee) until reimbursed in full.

**11. BASELINE DOCUMENTATION.**

The Baseline Documentation, executed by Grantee and Grantor and by this reference incorporated herein, is on file with the Grantee and may be used by Grantee to establish whether a change in the use or character of the Easement Property has occurred but the report shall not preclude the use by Grantee of other evidence to establish the condition of the Easement Property as of the date of this Conservation Easement.

**12. MONITORING.**

- A. Upon reasonable notice to Grantor, Grantee shall have the right to enter the Easement Property, exclusive of residential dwellings, to inspect and monitor activities on the Easement Property for such purposes as may include, monitoring and maintaining boundary line markers, determining whether the provisions of Conservation Easement are being complied with, and/or enforcing provisions of the Conservation Easement.
- B. Grantee shall also have the right to monitor the Easement Property, exclusive of residential dwellings, at any time, without prior notice, if Grantee has reasonable cause to believe the provisions of the Conservation Easement have been, are being, or are about to be violated.
- C. A representative of New York City shall have the right to accompany the Grantee in monitoring and inspecting the Easement Property.

**13. BINDING DISPUTE RESOLUTION.**

If a dispute arises between the Grantor and Grantee over the interpretation of any provision of the Conservation Easement that the parties, after diligent efforts, have been unable to resolve to their mutual satisfaction, then either party may refer the dispute to binding arbitration by requesting in writing that NYSDEC appoint an Administrative Law Judge ("ALJ") to act as an Arbitrator to conduct the arbitration and issue a binding determination. The ALJ shall conduct the arbitration under the version of the AAA Commercial Dispute Resolution Procedures Expedited Procedure Rules then in effect. If such dispute shall concern an activity being conducted by Grantor that Grantee considers to be a violation of the Conservation Easement, then such activity shall be suspended by Grantor pending resolution of the dispute. The party seeking arbitration shall provide simultaneous notice to the other party by overnight mail and fax of such request. The request shall state with particularity the nature of the issue in question. Each party will bear its own costs, including half of any costs assessed by NYSDEC for the ALJ's time and expenses. The parties agree that the decision of the ALJ is binding upon the parties.

**14. ENFORCEMENT.**

In the event a violation or imminent violation of this Conservation Easement occurs, Grantee shall immediately notify the Grantor to request that the activity cease and arrange a site visit to mutually resolve the situation to the satisfaction of both parties.

If the Grantor ceases the activity in violation, but is unwilling or unable to cure any violation within ten (10) calendar days after the Grantee's initial site visit, Grantee shall send Grantor a written notice of

non-compliance, which shall notify Grantor of the violation and the measures reasonably calculated to cure such violation or imminent violation. Grantor shall have twenty (20) calendar days from the date the Grantor receives such notice, or such other period Grantee may deem appropriate, to cure the conditions constituting the violation. In the event the Grantor fails to cure the violation within the twenty (20) calendar days or period designated by Grantee, Grantee shall seek to enforce such other legal and/or equitable remedies as Grantee deems necessary to ensure compliance with the terms and purposes of this Conservation Easement.

In the event that the Grantor refuses to cease such activity or agree to a site visit, or when Grantee determines that a violation or imminent violation could substantially impair the purposes of this Conservation Easement, or that an imminent or immediate threat to the City's drinking water supply exists, Grantee may seek an injunction to stop it, temporarily or permanently. If a court with jurisdiction determines that a violation may exist or has occurred, the court may also issue an order requiring the Grantor to restore the Easement Property to its condition prior to the violation.

In any case where a court finds that a violation has occurred, the Grantor shall reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

#### 15. THIRD PARTY ENFORCEMENT.

A. The City, the New York State Attorney General and their successors shall have the right to enforce the terms of the Conservation Easement subject to the following:

1. Prior to commencing an enforcement action in a court of competent jurisdiction, the City or the New York State Attorney General must first notify Grantee and Grantor, give Grantee sixty (60) days to take appropriate action, including commencing an enforcement action, and give Grantor sixty (60) days from the receipt of such notice to cure the breach.
2. If Grantee is diligently prosecuting an enforcement action in an administrative or judicial proceeding, neither the City nor the New York State Attorney General shall have a right to prosecute an action for the same violation or breach of the Conservation Easement.

B. If the City has a reasonable belief that a violation of the Conservation Easement is causing an immediate threat to the City's drinking water supply the City shall have the right to inspect the Easement Property.



- C. Other than pursuant to Article 49 Title 3 of the NYSECL, nothing contained herein shall be construed as providing the New York State Attorney General with the right to physically inspect or otherwise enter the Easement Property

**16. ACTS BEYOND GRANTOR'S CONTROL.**

This Conservation Easement shall not be construed to entitle Grantee to bring any legal action against Grantor for any injury to or change in the Easement Property resulting from events beyond the control of the Grantor. Such events include fire, flood, storm, war, judicial intervention, strike, insurrection, radioactive fallout, earthquake, landslide or Acts of God, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Property resulting from such causes.

**17. TRANSFER OF EASEMENT.**

- A. Grantee agrees to notify Grantor in writing at least thirty (30) days in advance of the transfer of this Conservation Easement to another conservation organization as further described in this Section. Grantee and the Grantor agree that this Conservation Easement may be transferred by Grantee to a "Qualified Organization" under Section 170(h) of the U.S. Internal Revenue Code, and under the New York State Environmental Conservation Law, and only if the agency or Organization expressly agrees to assume the responsibilities imposed on the Grantee by the Conservation Easement and only with prior written approval from the City.
- B. If, at any time, Grantee becomes incapable of ensuring, or unwilling to ensure, compliance with the terms of this Conservation Easement, or if Grantee shall cease to exist as an entity qualified to hold conservation easements, then its rights and responsibilities shall become vested in and devolve upon a Qualified Organization, provided such Organization shall accept in writing this Conservation Easement, and provided such Organization enters into a written agreement with the City pursuant to which such Organization assumes and ensures all duties of Grantee described herein, are performed. If no Qualified Organization can be identified that meets the above criteria, the Grantee's rights and responsibilities shall become vested in and devolve upon the City. In selecting the Qualified Organization to which this Conservation Easement may be transferred under this Section, preference shall be given to, and a reasonable effort will be made to assign this Conservation Easement to a local Qualified Organization.
- C. With respect to paragraphs A and B of this Section 17, in no event shall the City approve or enter into an agreement with such a Qualified Organization to serve as a successor Grantee unless such Qualified Organization has agreed, with respect to the administration, management and stewardship

of this the Conservation Easement, to adopt a transparency policy identical in substance to the most recently adopted WAC transparency policy in effect at the time of such transfer to a successor Grantee, unless such organization expressly agrees that it is subject to or shall voluntarily comply with the requirements of the New York State Public Officers law, including but not limited to the Open Meetings Law (Pub. Off. Law Sections 100-111) and the Freedom of Information Law (Pub. Off. Law Sections 84-90).

**18. TRANSFER OF PROPERTY.**

In order to facilitate the stewardship of the Conservation Easement, Grantor shall notify Grantee of any planned conveyance, lease, or transfer of the Easement Property. Such notice shall be given in writing at least thirty (30) days in advance of such conveyance, lease, or transfer. Any such conveyance, lease, or transfer shall expressly refer to this Deed of Conservation Easement and shall be made subject to the terms of the Conservation Easement.

**19. WAIVER OR AMENDMENT.**

The Conservation Easement may not be materially amended without the written consent of the Grantee, Grantor, and the NYS Attorney General. Any other amendment, modification or waiver shall require the written consent of the Grantee and Grantor. Any amendment, modification, or waiver shall be consistent with the Conservation Purposes of the Conservation Easement and shall comply with Article 49 of the NYS Environmental Conservation Law or any regulations promulgated thereunder.

**20. EXTINGUISHMENT.**

If it determines that conditions on or surrounding the Easement Property changed so much that it becomes impracticable to fulfill its Conservation Purposes, a court with jurisdiction may, at the joint request of Grantee, Grantor, the Attorney General and the City, terminate the Conservation Easement

**21. EMINENT DOMAIN.**

- A. If and when the rights and obligations contained in the Conservation Easement are ever involuntarily extinguished in whole or in part by an eminent domain taking or otherwise, Grantor and Grantee agree to divide the proceeds recovered from the taking of land exclusive of the value of the improvements in proportions equal to their interests in the Easement Property as of the date of the execution of this Conservation Easement, unless otherwise prohibited by law.
- B. Grantor and/or Grantee may take the following actions if all or any part of the Easement Property

is taken under the power of eminent domain by a public, corporate or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, if such taking has the effect of abrogating the restrictions imposed by the Conservation Easement or otherwise frustrates the Conservation Purposes:

1. Join in the taking proceedings to oppose such taking and/or to recover the full value of the interests in the Easement Property subject to taking and all incidental or direct damages resulting from the taking, and
  2. Pay out of the recovered proceeds, all expenses reasonably incurred by the parties to the Conservation Easement in connection with such taking.
- C. The respective rights of the parties set forth in this Section 21 shall be in addition to and not in limitation of any rights they may have at law with respect to the exercise of the powers of eminent domain.

**22. OTHER LAWS AND REGULATIONS IN EFFECT.**

The Conservation Easement does not relieve the Grantor from the obligation to comply with all applicable ordinances, laws, rules, regulations, and/or permit conditions of any governmental or regulatory body, including but not limited to the City, its successors or assigns. The Conservation Easement shall not be construed to limit or modify the regulatory authority of the City. In addition to any restrictions or requirements set forth in the Conservation Easement, Grantor must apply for any and all required permits in the manner set forth in any applicable law or regulation and perform the work for which the permit was issued in accordance with the conditions thereof.

**23. FILTRATION NOT TO DEFEAT PURPOSE OF EASEMENT.**

Filtration or other treatment of all or any portion of the water supply the Conservation Easement seeks to protect, now or in the future, shall not be deemed to defeat the purpose, terms, or enforcement of the Conservation Easement.

**24. INTERPRETATION.**

The Conservation Easement shall be interpreted under the laws of New York State, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purposes.

**25. DURATION AND BINDING EFFECT.**

The Conservation Easement created by this deed shall be a servitude running with the land and shall

bind and be enforceable against the Grantor and all future owners of the Easement Property. Every provision of the Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

**26. FURTHER COVENANTS.**

In the event the execution and delivery by Grantor of any additional document or instrument is necessary or desirable to qualify or perfect the Conservation Easement as a conservation easement authorized under Title 3, Article 49, of the NYSECL, Grantors shall promptly execute and deliver to Grantee such instrument or other documents as the Grantee may reasonably request.

**27. NOTICES.**

Any notices required by the Conservation Easement shall be in writing and shall be personally delivered or sent by certified mail, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

To Grantor:

[Legal Address]

To Grantee:

Watershed Agricultural Council  
33195 State Highway 10  
Walton, New York 13856-9751  
Attn: Easement Program Manager

**28. SUBSEQUENT LIENS ON PROPERTY.**

No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use the Easement Property as collateral for subsequent borrowing provided that any mortgage or lien arising from such a borrowing is subordinated to this Conservation Easement as modified or amended.

**29. ESTOPPEL CERTIFICATES.**

Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor, or to

any party designated by Grantor, any document, that certifies, to the best of the Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in the Conservation Easement or otherwise evidences the status hereof. Such certification shall be limited to the condition of the Easement Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection at Grantor's expense, within thirty (30) days of receipt of Grantor's written request therefore.

**30. SEVERABILITY.**

If any portion of the Conservation Easement is found invalid, the remainder of the provisions of the Conservation Easement shall not be affected.

**31. ACCEPTANCE.**

As attested by the signature of the Chair of The Watershed Agricultural Council of the New York City Watersheds, Inc., the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement.

To Have and To Hold, this Deed of Conservation Easement unto the Grantee, its successors and assigns.

In Witness Whereof, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

Grantor

\_\_\_\_\_

Landowner Name

Grantee

\_\_\_\_\_

, Chair

The Watershed Agricultural Council of the New York City Watersheds, Inc.

ACKNOWLEDGMENTS

State of New York )

County of \_\_\_\_\_ ), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 201\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared, \_\_\_\_\_[landowner], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

State of New York )

County of \_\_\_\_\_ ), ss:

On the \_\_\_\_ day of \_\_\_\_\_ in the year 201\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared, \_\_\_\_\_[WAC], personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Exhibit A**  
**Legal Description**